
HOUSE BILL 2562

State of Washington

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By Representative Upthegrove

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1 AN ACT Relating to foreclosures on deeds of trust; and amending RCW
2 61.24.040, 61.24.060, 61.24.140, and 61.24.005.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 61.24.040 and 1998 c 295 s 5 are each amended to read
5 as follows:

6 A deed of trust foreclosed under this chapter shall be foreclosed
7 as follows:

8 (1) At least ninety days before the sale, the trustee shall:

9 (a) Record a notice in the form described in ((RCW
10 ~~61.24.040(1)(f))~~) (g) of this subsection in the office of the auditor
11 in each county in which the deed of trust is recorded;

12 (b) To the extent the trustee elects to foreclose its lien or
13 interest, or the beneficiary elects to preserve its right to seek a
14 deficiency judgment against a borrower or grantor under RCW
15 61.24.100(3)(a), and if their addresses are stated in a recorded
16 instrument evidencing their interest, lien, or claim of lien, or an
17 amendment thereto, or are otherwise known to the trustee, cause a copy
18 of the notice of sale described in ((RCW ~~61.24.040(1)(f))~~) (g) of this

1 subsection to be transmitted by both first class and either certified
2 or registered mail, return receipt requested, to the following persons
3 or their legal representatives, if any, at such address:

4 (i) The borrower and grantor;

5 (ii) The beneficiary of any deed of trust or mortgagee of any
6 mortgage, or any person who has a lien or claim of lien against the
7 property, that was recorded subsequent to the recordation of the deed
8 of trust being foreclosed and before the recordation of the notice of
9 sale;

10 (iii) The vendee in any real estate contract, the lessee in any
11 lease, or the holder of any conveyances of any interest or estate in
12 any portion or all of the property described in such notice, if that
13 contract, lease, or conveyance of such interest or estate, or a
14 memorandum or other notice thereof, was recorded after the recordation
15 of the deed of trust being foreclosed and before the recordation of the
16 notice of sale;

17 (iv) The last holder of record of any other lien against or
18 interest in the property that is subject to a subordination to the deed
19 of trust being foreclosed that was recorded before the recordation of
20 the notice of sale; and

21 (v) The last holder of record of the lien of any judgment
22 subordinate to the deed of trust being foreclosed; (~~and~~

23 ~~(vi)~~) (c) Serve a copy of the notice of sale described in (g) of
24 this subsection on the occupants and tenants of property consisting
25 solely of a single-family residence, or a condominium, cooperative, or
26 other dwelling unit in a multiplex or other building (~~containing fewer~~
27 ~~than five residential units~~), whether or not the (~~occupant's~~)
28 occupant or tenant has a rental agreement (~~is recorded~~), which notice
29 may be a single notice addressed to "occupants" or "tenants" for each
30 unit known to the trustee or beneficiary;

31 (~~(e)~~) (d) Cause a copy of the notice of sale described in (~~RCW~~
32 ~~61.24.040(1)(f)~~) (g) of this subsection to be transmitted by both
33 first class and either certified or registered mail, return receipt
34 requested, to the plaintiff or the plaintiff's attorney of record, in
35 any court action to foreclose a lien or other encumbrance on all or any
36 part of the property, provided a court action is pending and a lis
37 pendens in connection therewith is recorded in the office of the

1 auditor of any county in which all or part of the property is located
2 on the date the notice is recorded;

3 ~~((d))~~ (e) Cause a copy of the notice of sale described in ((RCW
4 ~~61.24.040(1)(f))~~) (g) of this subsection to be transmitted by both
5 first class and either certified or registered mail, return receipt
6 requested, to any person who has recorded a request for notice in
7 accordance with RCW 61.24.045, at the address specified in such
8 person's most recently recorded request for notice;

9 ~~((e))~~ (f) Cause a copy of the notice of sale described in ((RCW
10 ~~61.24.040(1)(f))~~) (g) of this subsection to be posted in a conspicuous
11 place on the property(~~, or in lieu of posting, cause a copy of said
12 notice to be served upon any occupant of the property~~));

13 ~~((f))~~ (g) The notice shall be in substantially the following
14 form:

15 NOTICE OF TRUSTEE'S SALE

16 I.

17 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the
18 day of,, at the hour of o'clock M. at
19 [street
20 address and location if inside a building] in the City of,
21 State of Washington, sell at public auction to the highest and best
22 bidder, payable at the time of sale, the following described real
23 property, situated in the County(ies) of, State of
24 Washington, to-wit:

25 [If any personal property is to be included in the trustee's
26 sale, include a description that reasonably identifies such
27 personal property]

28 which is subject to that certain Deed of Trust dated,
29, recorded,, under Auditor's File No.,
30 records of County, Washington, from, as
31 Grantor, to, as Trustee, to secure an obligation in
32 favor of, as Beneficiary, the beneficial interest in
33 which was assigned by, under an Assignment recorded
34 under Auditor's File No. [Include recording information for
35 all counties if the Deed of Trust is recorded in more than one county.]

36 II.

1 No action commenced by the Beneficiary of the Deed of Trust is now
2 pending to seek satisfaction of the obligation in any Court by reason
3 of the Borrower's or Grantor's default on the obligation secured by the
4 Deed of Trust.

5 [If there is another action pending to foreclose other security
6 for all or part of the same debt, qualify the statement and
7 identify the action.]

8 III.

9 The default(s) for which this foreclosure is made is/are as follows:

10 [If default is for other than payment of money, set forth the
11 particulars]

12 Failure to pay when due the following amounts which are now in arrears:

13 IV.

14 The sum owing on the obligation secured by the Deed of Trust is:
15 Principal \$, together with interest as provided in the note
16 or other instrument secured from the day of,,
17 and such other costs and fees as are due under the note or other
18 instrument secured, and as are provided by statute.

19 V.

20 The above-described real property will be sold to satisfy the expense
21 of sale and the obligation secured by the Deed of Trust as provided by
22 statute. The sale will be made without warranty, express or implied,
23 regarding title, possession, or encumbrances on the day of
24, The default(s) referred to in paragraph III must be
25 cured by the day of, (11 days before the sale
26 date), to cause a discontinuance of the sale. The sale will be
27 discontinued and terminated if at any time on or before the day
28 of,, (11 days before the sale date), the default(s)
29 as set forth in paragraph III is/are cured and the Trustee's fees and
30 costs are paid. The sale may be terminated any time after the
31 day of, (11 days before the sale date), and before
32 the sale by the Borrower, Grantor, any Guarantor, or the holder of any
33 recorded junior lien or encumbrance paying the entire principal and
34 interest secured by the Deed of Trust, plus costs, fees, and advances,

1 if any, made pursuant to the terms of the obligation and/or Deed of
2 Trust, and curing all other defaults.

3 VI.

4 A written notice of default was transmitted by the Beneficiary or
5 Trustee to the Borrower and Grantor at the following addresses:

6
7
8

9 by both first class and certified mail on the day of
10,, proof of which is in the possession of the Trustee;
11 and the Borrower and Grantor were personally served on the day
12 of,, with said written notice of default or the
13 written notice of default was posted in a conspicuous place on the real
14 property described in paragraph I above, and the Trustee has possession
15 of proof of such service or posting.

16 VII.

17 The Trustee whose name and address are set forth below will provide in
18 writing to anyone requesting it, a statement of all costs and fees due
19 at any time prior to the sale.

20 VIII.

21 The effect of the sale will be to deprive the Grantor and all those who
22 hold by, through or under the Grantor of all their interest in the
23 above-described property.

24 IX.

25 Anyone having any objection to the sale on any grounds whatsoever will
26 be afforded an opportunity to be heard as to those objections if they
27 bring a lawsuit to restrain the sale pursuant to RCW 61.24.130.
28 Failure to bring such a lawsuit may result in a waiver of any proper
29 grounds for invalidating the Trustee's sale.

30 [Add Part X to this notice if applicable under RCW 61.24.040(9)]

31
32 , Trustee

1	amount of		
2	\$. . . /mo.:	\$	\$
3	Late charges in		
4	the total		
5	amount of:	\$	\$
6			Estimated
7			Amounts
8	Attorneys' fees:	\$	\$
9	Trustee's fee:	\$	\$
10	Trustee's expenses:		
11	(Itemization)		
12	Title report	\$	\$
13	Recording fees	\$	\$
14	Service/Posting		
15	of Notices	\$	\$
16	Postage/Copying		
17	expense	\$	\$
18	Publication	\$	\$
19	Telephone		\$
20	charges	\$	
21	Inspection fees	\$	\$
22	\$	\$
23	\$	\$
24	TOTALS	\$	\$

25 As to the defaults which do not involve payment of money to the
26 Beneficiary of your Deed of Trust, you must cure each such default.
27 Listed below are the defaults which do not involve payment of money to
28 the Beneficiary of your Deed of Trust. Opposite each such listed
29 default is a brief description of the action necessary to cure the
30 default and a description of the documentation necessary to show that
31 the default has been cured.

32	Default	Description of Action Required to Cure and
33		Documentation Necessary to Show Cure
34
35	

1
2
3
4

5 You may reinstate your Deed of Trust and the obligation secured
6 thereby at any time up to and including the . . . day of ,
7 . . . [11 days before the sale date], by paying the amount set forth or
8 estimated above and by curing any other defaults described above. Of
9 course, as time passes other payments may become due, and any further
10 payments coming due and any additional late charges must be added to
11 your reinstating payment. Any new defaults not involving payment of
12 money that occur after the date of this notice must also be cured in
13 order to effect reinstatement. In addition, because some of the
14 charges can only be estimated at this time, and because the amount
15 necessary to reinstate may include presently unknown expenditures
16 required to preserve the property or to comply with state or local law,
17 it will be necessary for you to contact the Trustee before the time you
18 tender reinstatement so that you may be advised of the exact amount you
19 will be required to pay. Tender of payment or performance must be made
20 to: , whose address is , telephone ()
21 AFTER THE DAY OF , . . . , YOU MAY NOT
22 REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND
23 FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. In such a case,
24 you will only be able to stop the sale by paying, before the sale, the
25 total principal balance (\$) plus accrued interest, costs
26 and advances, if any, made pursuant to the terms of the documents and
27 by curing the other defaults as outlined above.

28 You may contest this default by initiating court action in the
29 Superior Court of the county in which the sale is to be held. In such
30 action, you may raise any legitimate defenses you have to this default.
31 A copy of your Deed of Trust and documents evidencing the obligation
32 secured thereby are enclosed. You may wish to consult a lawyer. Legal
33 action on your part may prevent or restrain the sale, but only if you
34 persuade the court of the merits of your defense.

35 The court may grant a restraining order or injunction to restrain
36 a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the
37 trustee of the time when, place where, and the judge before whom the
38 application for the restraining order or injunction is to be made.

1 This notice shall include copies of all pleadings and related documents
2 to be given to the judge. Notice and other process may be served on
3 the trustee at:

4 NAME:
5 ADDRESS:
6
7 TELEPHONE NUMBER:

8 If you do not reinstate the secured obligation and your Deed of
9 Trust in the manner set forth above, or if you do not succeed in
10 restraining the sale by court action, your property will be sold. The
11 effect of such sale will be to deprive you and all those who hold by,
12 through or under you of all interest in the property;

13 (3) In addition, the trustee shall cause a copy of the notice of
14 sale described in (~~RCW 61.24.040(1)(f)~~) subsection (1)(g) of this
15 section, excluding the acknowledgment(~~(+)~~), to be published in a legal
16 newspaper in each county in which the property or any part thereof is
17 situated, once on or between the thirty-fifth and twenty-eighth day
18 before the date of sale, and once on or between the fourteenth and
19 seventh day before the date of sale;

20 (4) On the date and at the time designated in the notice of sale,
21 the trustee or its authorized agent shall sell the property at public
22 auction to the highest bidder. The trustee may sell the property in
23 gross or in parcels as the trustee shall deem most advantageous;

24 (5) The place of sale shall be at any designated public place
25 within the county where the property is located and if the property is
26 in more than one county, the sale may be in any of the counties where
27 the property is located. The sale shall be on Friday, or if Friday is
28 a legal holiday on the following Monday, and during the hours set by
29 statute for the conduct of sales of real estate at execution;

30 (6) The trustee may for any cause the trustee deems advantageous,
31 continue the sale for a period or periods not exceeding a total of one
32 hundred twenty days by a public proclamation at the time and place
33 fixed for sale in the notice of sale or, alternatively, by giving
34 notice of the time and place of the postponed sale in the manner and to
35 the persons specified in (~~RCW 61.24.040~~) subsection (1)(b), (c), (d),
36 (~~and~~) (e), and (f) of this section and publishing a copy of such
37 notice once in the newspaper(s) described in (~~RCW 61.24.040~~)

1 subsection (3) of this section, more than seven days before the date
2 fixed for sale in the notice of sale. No other notice of the postponed
3 sale need be given;

4 (7) The purchaser shall forthwith pay the price bid and on payment
5 the trustee shall execute to the purchaser its deed; the deed shall
6 recite the facts showing that the sale was conducted in compliance with
7 all of the requirements of this chapter and of the deed of trust, which
8 recital shall be prima facie evidence of such compliance and conclusive
9 evidence thereof in favor of bona fide purchasers and encumbrancers for
10 value, except that these recitals shall not affect the lien or interest
11 of any person entitled to notice under (~~RCW 61.24.040~~) subsection (1)
12 of this section, if the trustee fails to give the required notice to
13 such person. In such case, the lien or interest of such omitted person
14 shall not be affected by the sale and such omitted person shall be
15 treated as if such person was the holder of the same lien or interest
16 and was omitted as a party defendant in a judicial foreclosure
17 proceeding;

18 (8) The sale as authorized under this chapter shall not take place
19 less than one hundred ninety days from the date of default in any of
20 the obligations secured(~~(-)~~);

21 (9) If the trustee elects to foreclose the interest of any occupant
22 or tenant of property comprised solely of a single-family residence, or
23 a condominium, cooperative, or other dwelling unit in a multiplex or
24 other building (~~(containing fewer than five residential units)~~),
25 contact information for obtaining purchaser contact information, as
26 well as an address to which occupants and tenants shall continue to
27 send lease payments after the sale until notified differently by the
28 purchaser, must be provided as part of the following notice (~~shall~~)
29 that must be included as Part X of the Notice of Trustee's Sale:

30 X.

31 NOTICE TO OCCUPANTS OR TENANTS

32 For purchaser contact information following trustee sale, contact:

33 Name:

34 Address:

35 Telephone:

36 Until notified differently by the purchaser, lease payments and other
37 correspondence after the date of the trustee sale shall be transmitted
38 to:

1 Name:
2 Address:
3 Telephone:

4 The purchaser at the trustee's sale is entitled to possession of the
5 property on the 20th day following the sale, as against the grantor
6 under the deed of trust (the owner) and anyone having an interest
7 junior to the deed of trust, (~~(including)~~) except for occupants and
8 tenants who are in compliance with the duties of tenants specified in
9 RCW 59.18.130 during the time periods outlined within this notice.
10 (~~(After the 20th day following the sale)~~) The purchaser has the right
11 to evict occupants and tenants by summary proceedings under the
12 unlawful detainer act, chapter 59.12 RCW(~~(-)~~) as follows:

13 (1) For an occupant or tenant who at the time of the sale is in
14 compliance with the duties of tenants specified in RCW 59.18.130 and
15 who continues to be in compliance with RCW 59.18.130 while occupying
16 the property: (a) After the one hundred twentieth day following the
17 sale or the expiration of the lease, whichever occurs first, if the
18 occupant or tenant has a written or recorded rental agreement; or (b)
19 after the ninetieth day following the sale if the occupant or tenant
20 does not have a written or recorded rental agreement; or

21 (2) For an occupant or tenant who at the time of the sale is not in
22 compliance with the duties of tenants specified in RCW 59.18.130, after
23 the twentieth day following the sale;

24 (10) Only one copy of all notices required by this chapter need be
25 given to a person who is both the borrower and the grantor. All
26 notices required by this chapter that are given to a general
27 partnership are deemed given to each of its general partners, unless
28 otherwise agreed by the parties.

29 **Sec. 2.** RCW 61.24.060 and 1998 c 295 s 8 are each amended to read
30 as follows:

31 The purchaser at the trustee's sale shall be entitled to possession
32 of the property on the twentieth day following the sale, as against the
33 grantor under the deed of trust and anyone having an interest junior to
34 the deed of trust, (~~(including)~~) except for occupants and tenants(~~(-)~~
35 who were given all of the notices) who are in compliance with the
36 duties of tenants specified in RCW 59.18.130 during the time periods
37 outlined within the notice to which they were entitled under this

1 chapter. The purchaser shall also have a right to the summary
2 proceedings to obtain possession of real property provided in chapter
3 59.12 RCW except that the purchaser only has the right to evict
4 occupants and tenants by summary proceedings under chapter 59.12 RCW as
5 follows:

6 (1) For an occupant or tenant who at the time of the sale is in
7 compliance with the duties of tenants specified in RCW 59.18.130 and
8 who continues to be in compliance with RCW 59.18.130 while occupying
9 the property: (a) After the one hundred twentieth day following the
10 sale or the expiration of the lease, whichever occurs first, if the
11 occupant or tenant has a written or recorded rental agreement; or (b)
12 after the ninetieth day following the sale if the occupant or tenant
13 does not have a written or recorded rental agreement; or

14 (2) For an occupant or tenant who at the time of the sale is not in
15 compliance with the duties of tenants specified in RCW 59.18.130, after
16 the twentieth day following the sale.

17 **Sec. 3.** RCW 61.24.140 and 1998 c 295 s 16 are each amended to read
18 as follows:

19 The beneficiary shall not enforce or attempt to enforce an
20 assignment of rents by demanding or collecting rent from ((a)) an
21 occupant or tenant occupying property consisting solely of a single-
22 family residence, or a condominium, cooperative, or other dwelling unit
23 in a multiplex or other building (~~containing fewer than five~~
24 ~~residential units)), without first giving the occupant or tenant either
25 a court order authorizing payment of rent to the beneficiary or a
26 written consent by the occupant's or tenant's landlord to the payment.
27 It is a defense to an eviction based on nonpayment of rent that the
28 occupant or tenant paid the rent due to the beneficiary pursuant to a
29 court order or a landlord's written consent.~~

30 **Sec. 4.** RCW 61.24.005 and 1998 c 295 s 1 are each amended to read
31 as follows:

32 The definitions in this section apply throughout this chapter
33 unless the context clearly requires otherwise.

34 (1) "Grantor" means a person, or its successors, who executes a
35 deed of trust to encumber the person's interest in property as security
36 for the performance of all or part of the borrower's obligations.

1 (2) "Beneficiary" means the holder of the instrument or document
2 evidencing the obligations secured by the deed of trust, excluding
3 persons holding the same as security for a different obligation.

4 (3) "Affiliate of beneficiary" means any entity which controls, is
5 controlled by, or is under common control with a beneficiary.

6 (4) "Trustee" means the person designated as the trustee in the
7 deed of trust or appointed under RCW 61.24.010(2).

8 (5) "Borrower" means a person or a general partner in a
9 partnership, including a joint venture, that is liable for all or part
10 of the obligations secured by the deed of trust under the instrument or
11 other document that is the principal evidence of such obligations, or
12 the person's successors if they are liable for those obligations under
13 a written agreement with the beneficiary.

14 (6) "Guarantor" means any person and its successors who is not a
15 borrower and who guarantees any of the obligations secured by a deed of
16 trust in any written agreement other than the deed of trust.

17 (7) "Commercial loan" means a loan that is not made primarily for
18 personal, family, or household purposes.

19 (8) "Trustee's sale" means a nonjudicial sale under a deed of trust
20 undertaken pursuant to this chapter.

21 (9) "Fair value" means the value of the property encumbered by a
22 deed of trust that is sold pursuant to a trustee's sale. This value
23 shall be determined by the court or other appropriate adjudicator by
24 reference to the most probable price, as of the date of the trustee's
25 sale, which would be paid in cash or other immediately available funds,
26 after deduction of prior liens and encumbrances with interest to the
27 date of the trustee's sale, for which the property would sell on such
28 date after reasonable exposure in the market under conditions requisite
29 to a fair sale, with the buyer and seller each acting prudently,
30 knowledgeably, and for self-interest, and assuming that neither is
31 under duress.

32 (10) "Record" and "recorded" includes the appropriate registration
33 proceedings, in the instance of registered land.

34 (11) "Rental agreement" has the same meaning as in RCW 59.18.080.

35 (12) "Person" means any natural person, or legal or governmental
36 entity.

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